**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL MISC.APPLICATION No. 14386 of 2006**
**With**
**CRIMINAL MISC.APPLICATION No. 14387 of 2006**
**With**
**CRIMINAL MISC.APPLICATION No. 14388 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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**MRS. ALKA D. SHAH & 7 - Applicant(s)**
**Versus**
**THE STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**
MR PM THAKKAR, SR.ADVOCATE FOR M/S THAKKAR ASSOC. for Applicant(s):1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
NANAVATI ASSOCIATES for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date :11/12/2007**

**ORAL JUDGMENT**

1. As common question of law and facts arise in these applications, they are being disposed of by this common judgment and order.

2. Cr.Misc.Application No.14386 of 2006 is filed by the petitioners herein – original accused nos. 4 to 11 of Criminal Case No.1394 of 2000 under Section 482 of the Criminal Procedure Code to quash the complaint being Criminal Case No. 1394 of 2000 pending in the Court of Learned Judicial Magistrate, First Class, Vadodara filed by respondent No.2 for the offences punishable under Sections 138 and 142 of the Negotiable Instrument Act (herein after referred to as 'N.I.Act' for short).

3. Cr.Misc.Application No.14387 of 2006 is filed by the petitioners herein – original accused nos. 4 to 11 of Criminal Case No.1630 of 2000 under Section 482 of the Criminal Procedure Code to quash the complaint being Criminal Case No. 1630 of 2000 pending in the Court of Learned Judicial Magistrate, First Class, Vadodara filed by respondent No.2 for the offences punishable under Sections 138 and 142 of the N.I.Act.

4. Cr.Misc.Application No.14388 of 2006 is filed by the petitioners herein – original accused nos. 4 to 11 of Criminal Case No.1631 of 2000 under Section 482 of the Criminal Procedure Code to quash the complaint being Criminal Case No. 1631 of 2000 pending in the Court of Learned Judicial Magistrate, First Class, Vadodara filed by respondent No.2 for the offences punishable

under Sections 138 and 142 of the N.I.Act.

5. All the petitioners in the aforesaid three applications are the original accused Nos. 4 to 11 of Criminal Case Nos. 1394 of 2000, 1630 of 2000 and 1631 of 2000 filed by respondent no.2 – original complainant pending in the Court of learned J.M.F.C., Vadodara, for the offences punishable under Sections 138 and 142 of the N.I.Act and the learned trial Judge has issued summons upon all the accused.

6. Aforesaid three criminal cases are filed by respondent no.2 – original complainant in the Court of the learned Chief Judicial Magistrate, Vadodara against all the accused for the offences punishable under Section138 of the N.I.Act, alleging inter-alia that the complainant – Company is a Public Limited Company registered under the Companies Act, 1956 and engaged in business of manufacturing and selling various chemicals including Caustic Soda Lye and Caustic Soda Flakes. That the accused nos. 2 to 11 are the Partners of Accused No.1, a Partnership firm, engaged in trading business of Chemicals and for the requirement of Caustic Soda Lye and Caustic Soda Flakes for their firm the accused nos. 2 and 3 had started purchasing the said products from the complainant – company since 1996. That the accused nos. 2 to 11 being partners of the firm, decide and manage all the business and financial affairs of the firm and incharge of day to day business and therefore, all the accused are jointly and severally liable for all the

acts done for and on behalf of the accused firm. It is alleged in the complaint that initially to induce the complainant to deliver the said products the Accused made regular payments against the delivery of said products to the complainant company. It is further alleged in the complaint that during the year 1996 the complainant company delivered the said products worth lacs of rupees to the accused firm and in turn to make the part of the payment towards the outstanding amount, the accused no.3 signed and delivered various cheques, for and on behalf of the firm, accused no.3 as being Managing Partner. However, the said cheques were dishonoured for the reason 'Refer to Drawer' and therefore, the complainant company filed Criminal Complaint Nos. 1326/1997, 1399/1997, 1400/1997 and 1401 of 1997 under Section 138 of the N.I.Act against all the accused and other partners, before the learned Chief Judicial Magistrate, Vadodara. It is further alleged in the complaint that during the course of hearing of the complaints the complainant company has also filed a Summary Suit No. 830 of 1997 before the learned Civil Judge, Vadodara for the total claim amount of Rs.3,48,02,007/- against the accused firm and all the accused being partners of the said firm. It is averred in the complaint that in view of the above legal proceedings the accused no.3 negotiated the accounts with the complainant company for the settlement of criminal and civil litigation pending in the Court of Vadodara and as per the authorization issued by the remaining partners to the accused no.3 who was authorized to compromise, settle, deal with

the outstanding payment and to execute the necessary documents, papers, memorandum of understanding etc. in all the proceedings, signed and delivered the post dated cheques to the complainant company. Accordingly, the Written Compromise Deed was executed on 01.06.1999 and presented before the learned Civil Court at Vadodara on 22.06.1999. It is averred in the impugned complaint that in the Summary Suit No. 830 of 1997, the accused no.3 executed a Compromise Deed on 01.06.1999 and admitted that he and his firm along with other partners are liable to make payment of Rs.3,48,02,007/- to the complainant company, as claimed by the complainant company in the aforesaid Summary Suit. It is further averred in the aforesaid complaints that as per the negotiation made by the accused with the complainant company a Compromise Deed duly signed, sealed was submitted on 22.06.1999 before the learned Civil Judge, (SD), Vadodara and a request was made to dispose of the Summary Suit No. 830 of 1997 by a decree. That as per the terms and conditions of the above Compromise Deed the accused no.3 signed and delivered various cheques of different amount, dates to the complainant company on 01.06.1999 and thereby created faith in the complainant company not only to execute the Compromise Deed but to give consent for the disposal of the legal proceedings against the accused and other partners of the accused firm. It is further averred in the complaint that complainant company deposited the cheques in question in their account with HDFC Bank Ltd. and all the cheques came to be

dishonoured by the Bank of the accused for the reason 'Refer to Drawer' and the said cheques along with the Bank Memo have been returned to the complainant company by their Bank. It is further averred in the impugned complaints that aforesaid cheques came to be redeposited again as per the request made by accused no.3 and again all the cheques came to be dishonoured for the reason 'Refer to Drawer'. It is further averred in the complaint that thereafter, the complainant Company issued a statutory notice as required under the provisions of Section 138 of the NI Act wherein the accused were called upon to make the payment towards the dishonoured cheques within 15 days time from the date of receipt of the said notice. Notices have been served upon accused nos. 2,3, 5, 6, 7 and 8 on 3rd March, 2000 and notices send by registered post upon accused nos. 1,4,9, 10 and 11 were not claimed by them with dishonest intention knowing fully well that the cheques given to the complainant company has been dishonoured. It is further averred in the aforesaid complaints that despite the receipt of the notices the accused have not made any payments of the cheques in question and, therefore, all the accused persons have committed offences punishable under Section 138 of the NI Act read with Section 142 of the NI Act and therefore, original complainant has filed the aforesaid criminal complaints / cases against the petitioners and others for the offences punishable under Section 138 read with 142 of the NI Act. Said complaints are filed in the month of April, 2000.

7. The learned Chief Judicial Magistrate, Vadodara issued summons upon the respective accused inclusive of all the petitioners by respective orders dated 10th April, 2000 and 26th April, 2000. Being aggrieved and dissatisfied with the summons issued by the learned Chief Judicial Magistrate, Vadodara in the aforesaid criminal complaints and being aggrieved and dissatisfied with the aforesaid criminal complaints, respective petitioners have preferred the present applications under Section 482 of the Criminal Procedure Code for quashing the impugned complaints being Criminal Complaint Nos. 1394 of 2000, 1630 of 2000 and 1631 of 2000 pending in the Court of learned Chief Judicial Magistrate, Vadodara.

8. Mr.P.M.Thakkar, learned Senior Advocate appearing on behalf of the petitioners has submitted that there are no allegations satisfying the ingredients of Section 141 of the NI Act against the present petitioners and main allegations are levelled against accused no.3. It is also further submitted that all the negotiations took place between the complainant and accused no.3 which is confirmed by Compromise Deed dated 01.06.1999 making out clear that the same is entered into by accused no.3 on behalf of partnership firm. It is also further submitted that before the alleged transactions and issuance of cheques in question which took place in the year 2000, the petitioner nos. 1,2,4,6, 7 and 8 had already retired from the partnership firm and therefore, they cannot be

held liable under Section 138 read section 141 of the NI Act. For that purpose, he has relied upon retirement deed dated 01.07.1996 Annexure – C to the petition. Mr.Thakkar, learned Senior Advocate has relied upon decision of the Hon'ble Supreme Court in the case of S.M.S.Pharmaceuticals Ltd. V/s. Neeta Bhalla & Anr.(I) reported in (2005) 8 SCC 89 and another decision of the Hon'ble Supreme Court in the case of S.M.S.Pharmaceuticals Ltd. V/s. Neeta Bhalla & Anr.(II) reported in (2007) 4 SCC 70 (Para – 20 to 25). He has also relied upon following decisions of the Hon'ble Supreme Court in support of his prayer to quash and set aside the impugned complaints :-

1. N.K.Wahi v/s. Shekar Singh & Ors. reported in 2007 AIR SCW 1880.

2. Saroj Kumar Poddar v/s. State (NCT) of Delhi & Anr. reported in (2007) 3 SCC 693.

3. Sabitha Ramamurthy & Anr. V/s. RBS Channabasavardhya reported in (2006) 10 SCC 581.

4. Monaben Ketanbhai Shah & Anr. V/s. Neeta Bhalla & Ors. reported in (2004) 7 SCC 15.

5. Katta Sujatha (Smt.) v/s. Fertilizers & Chemicals Travancore Ltd. reported in (2000) 7 SCC 655.

6. K.P.J. Nair v/.s Jindal Menthol India Ltd. Reported in (2001) 10 SCC 218.

Making above submissions and relying upon the aforesaid decisions Mr.Thakkar, learned Senior Advocate appearing on behalf of the petitioners has requested to allow the present applications and to quash the impugned complaints.

9. All these applications are opposed by the learned Advocate appearing on behalf of respondent no.2 – original complainant. Affidavit-in-reply is also filed on behalf of respondent no.2. It is submitted that the present petitions suffer from vice of suppresio vari and suggestio falsi, in as much as the petitioners have suppressed various evidences, which are part of record of learned Civil Court. It is submitted that all the petitioners are partners of M/s. Aminex Rasayan, a partnership firm having its office at Mumbai and they are in-charge of the conduct of the business of the said partnership firm and they carry on the day to day business of the said partnership firm and are responsible to the affairs of the said partnership firm. It is submitted that necessary ingredients which are required making out a case under Section 138 and 141 of the NI Act are averred in the complaints. It is submitted that the petitioners including the said partnership firm had placed different orders from time to time with the complainant company of complainant company's product like caustic soda lye, Potassium Carbonate and the petitioners along with other partners had accepted and some of the partners on behalf of all the partners and the said firm had signed the sales offer of the complainant

company and accordingly, the products of complainant company were supplied and delivered ex-works price, from the complainant company, subject to the terms and conditions which includes 30 days credit and if the petitioners including the said firm fail to pay the said amount of purchase after 30 days, interest at the rate of 21% on unpaid price of each invoice amount for the product of the complainant company supplied and delivered to the petitioners is to be charged. It is submitted that all the present petitioners are responsible to the affairs of the said partnership firm and are in charge of the business of the said partnership firm and were carrying on the business of the said partnership firm and the same is established and admitted before the learned Court at Vadodara in Summary suit No. 830 of 1997 by way of executing a compromise deed dated 01.06.1999 and the same is also further established by the decree dated 25.06.1999 passed in Summary Suit No. 830 of 1997. It is submitted that vide letter dated 02.03.1995, accused no.1 informed respondent no.2 Company that all the petitioners along with other accused are partners of M/s. Aminex Rasayan and along with the said letter dated 02.03.1995, a deed of partnership dated 08.10.1986 was also issued which would amply demonstrate that all the petitioners are partners and are in-charge of the business of the said partnership firm and responsible to the day to day conduct of the said partnership firm.

10. Learned Counsel appearing on behalf of respondent

no.2 has submitted that ratio laid down in SMS Pharmaceuticals Ltd. V/s. Nita Bhalla and Anr.(I) reported in (2005) 8 SCC 89, cannot be made applicable to the facts and circumstances of the present case. It is submitted that in the case of Rajlaxmi Mills v/s. Shakti Bhakoo reported in (2002) 8 SCC 236, Larger Bench of the Hon'ble Apex Court has held that at the stage of summoning, when evidence is yet to be led by the parties, the High Court could not on an assumption of facts, come to a finding of fact that the respondent was not responsible for the conduct of the business. It is submitted that in the case of V.K.Jain v/s. Union of India and Ors. Reported in (2000) 1 SCC 709, it has been held by the Hon'ble Supreme Court that the contention that concerned person was not participating in the affairs of the company which issued a cheques, is a defence that can be adopted in the prosecution and cannot be ground for quashing the prosecution. It is submitted that similar view has been expressed by the Hon'ble Supreme Court in another decision in the case of Bharat K Gupta v/s. Arumkunar and Anr. Reported in (2000) 10 SCC 658.

11. Learned Counsel appearing on behalf of respondent No.2 has also relied upon the following recent decisions in support of his prayer to dismiss the present applications when there are specific averments in the complaints making out a case against the petitioners for the offences punishable under Sections 138 read with Section 141 of the NI Act :

1. N.Rangachari v/s. Bhara Sanchar Nigam Ltd. Reported in 2007 AIR SCW 2591.

2. Everest Advertising (P) Ltd. V/s. State Govt. of NCT of Delhi & Ors. reported in (2007) 5 SCC 54.

3. S.V.Muzumadar & Ors. V/s. Gujarat State Fertilizers Company Ltd. & Anr. reported in (2005) 4 SCC 173.

By making above submissions and relying upon the above decisions, learned Advocate appearing on behalf of respondent no.2 – complainant has requested to dismiss all the present applications by making further submission that summons have been issued by the learned trial Court in the year 2000 and present applications are filed for quashing in the year 2006.

12. Heard the learned Advocates appearing on behalf of the respective parties.

13. All the criminal complaints are filed by respondent no.2 – original complainant against the petitioners and others for the offence punishable under Sections 138 of the NI Act for dishonour of cheques in question which were issued or given by original accused no.3 pursuant to the concerned decree before the learned Civil Court for and on behalf of partnership firm and other partners. The allegations and averments against the petitioners in the impugned complains are that accused nos. 2 to 11 are the partners

of accused no.1 partnership firm and they being partners of the firm decide and manage all the business and financial affairs of the firm and in charge of day to day business and therefore, all the accused are jointly and severally liable for all the acts done for and on behalf of the accused firm. Relevant averments against the petitioners in the impugned complaints are in Para 3,4,7,10,15,19,20 and 21 which read as under :

> *'3. That the accused nos. 2 to 11 are the partners of accused no.1, a partnership firm, engaged in trading business of* chemicals *and for the requirement of Caustic Soda Lye and Caustic Soda Flakes for their firm the accused nos. 2 and 3 had started purchasing the said products from the complainant company since 1996. That the accused nos. 2 to 11 being partners of the firm, decide and manage all the business and financial affairs of the firm and incharge of day to day business and therefore, all the accused are jointly and severally liable for all the acts done for and on behalf of the accused firm. That initially to induce the complainant to deliver the said products the Accused made regular payments against the delivery of said products to the complainant company.*
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> *4. That during the year 1996 the complainant company delivered the said products worth laks of rupees to the accused firm and in turn to make the part of the payment towards the outstanding amount, the accused no.3 signed and delivered various cheques, for and on behalf of the firm, accused no.3 as being Managing Partner. However, the said cheques were dishonoured for the reason 'Refer to Drawer' and therefore, the complainant company has filed Criminal Complaint Nos. 1326/1997, 1399/1997, 1400/1997 and 1401 of 1997 under Section 138 of the N.I.Act against all the accused and other partners, before the learned Chief Judicial Magistrate, Vadodara.*
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> *7. That as per the authorization issued by the remaining partners to the accused no.3 who was authorized to compromise, settle, deal with the outstanding payment and to execute the necessary documents, papers, memorandum of understanding etc. in all the proceedings and further to sign and deliver the post dated cheques to the complainant*

*company. Accordingly, the Written Compromise Deed was executed on 01.06.1999 and presented before the learned Civil Court at Vadodara on 22.06.1999.*

*10. That as per the terms and conditions of the above Compromise Deed the accused no.3 signed and delivered various cheques of different amount, dates to the complainant company on 01.06.1999 and thereby created faith in the complainant company not only to execute the Compromise Deed but to give consent for the disposal of the legal proceedings against the accused and other partners of the accused firm.*

*15. That under the above circumstances the complainant company issued a notice on 24.12.1999 whereby all the accused were called upon to make the payment towards the dishonourned cheques. However, despite the receipt of the said notice the accused have failed and neglected to make the payment and therefore, the complainant company had filed a criminal complaint before the Hon'ble Chief Judicial Magistrate, Vadodara.*

*19. That notice to the accused nos. 2,3,5, 6, 7 & 8 has been served on 3rd March, 2000. However, with dishonest intention knowing fully well that the cheques given to the complainant company has been dishonoured, the notice sent by Registered Post were not claimed by the accused Nos. 1,4,9, 10 and 11.*

*20. However, despite the receipt of the said notice by the accused till today none of the accused has arranged to make the payment which clearly shows that the accused have fraudulently and dishonestly induced the complainant company to deliver the said products and again induced to execute Compromise Deed and the pending Civil Suit on the pretext of the post dated cheques, knowing fully well that the said cheques are not likely to be honored on presentation, as they did not have sufficient bank balance in their bank account.*

*21. That failure on the part of all the accused to make the payment towards the dishonoured cheques, despite the receipt of the notice, and thereby all the accused have rendered themselves liable for the serious offence under section 138 of the Negotiable Instruments Act and hence the complainant company files this complaint against all the above named accused.'*

14. Now in light of the above averments and allegations in

the impugned complaints against the respective petitioners, decisions of the Hon'ble Supreme Court referred to herein above and relied upon by the learned Advocates appearing on behalf of the respective parties are required to be considered.

15. Learned Counsels appearing on behalf of the respective petitioners has heavily relied upon the decision of the Hon'ble Supreme Court in the case of S.M.S.Pharmaceuticals Ltd. V/s. Neeta Bhalla and Anr. (I) and (II) (supra). It is required to be noted that in the case of S.M.S.Pharmaceuticals (II) (supra) there were no specific averments found in the complaint against the respective partners / Directors to the effect that they were in charge and were responsible to the conduct of the business of the company and they were vicariously liable for the commission of offence of the Company. In the said case, allegations and averemnts against the respective accused persons / Directors are reproduced in para 3 of the said judgment which reads as under :

> “3. In the complaint petition the allegations made inter alia are as under :
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> 'The Accused 1 is duly incorporated company, having its registered office at the address mentioned above, represented by the Director, accused no.2. The Accused 3 and 4 are also the Directors of accused 1 Company and accused 2 to 4 are actively involved in the management of the affairs of accused 1 company'.”

Similarly also in the case of N.K.Wahi (supra), there were no averments that the accused persons were in charge or

responsible to the Company for the conduct of the business of the Company. Necessary averments in the complaint in the said case are reproduced in para 12 of the said judgment.

In the case of Saroj Kumar Poddar (supra), also no such specific allegations and averments were found in the complaint against the Director that they were in charge and/or were responsible to the conduct of the business of the company.

In the case of Sabitha Ramamurthy & Anr. (supra), necessary averments making out a case and holding partners / directors responsible under section 141 of the NI Act were lacking. In the case of of Monaben Ketanbhai Shah (supra), as well as in the case of K.P.J.Nair (supra), necessary averments against the respective accused persons being partners / directors of the Company / partnership firm were not found and therefore, in the fact and circumstances of the case and considering the averments and allegations in the said complaint, Hon'ble Supreme Court in the aforesaid case has quashed the complaint.

16. Now law on the point is not res-integra. In the case of S.V.Mazumdar & Ors.(supra), the Hon'ble Supreme Court has observed and held that the dropping proceedings on the ground that the allegations would not constitute a foundation for action in terms of section 141 of the NI Act, is a question which is to be

adjudicated at the trial. It is also further observed by the Hon'ble Supreme Court that whether a person is in charge of or is responsible to the company for conduct of business is to be adjudicated on the basis of materials to be placed by the parties. Sub-section (2) of Section 141 is a deeming provision which operates in certain specified circumstances and whether the requirements for the application of the deeming provision exist or not is again a matter for adjudication during trial. Similarly, whether the allegations contained are sufficient to attract culpability is a matter for adjudication at the trial. It is also further observed by the Hon'ble Supreme Court whether or not the evidence led would establish the accusations, is a matter for trial and the proviso to sub-section (1) of Section 141 enables the accused to prove his innocence by discharging the burden which lies on him. By observing above, the Hon'ble Supreme Court confirmed the order passed by the High Court rejecting the petition filed by the appellants for dropping the proceedings for the offence under Section 138 of the NI Act.

17. In the recent decision in the case of N.Rangachari (supra), considering all earlier judgments of the Apex Court on the point inclusive of S.M.S.Pharmaceuticals Ltd. (supra) (II) as well as the decision in the case of Saroj Kumar Poddar (supra), Sabitha Ramamurthy (supra), Monaben Ketanbhai Shah (supra) and other judgments, the Hon'ble Supreme Court has held when there are

allegations and averments in the complaint that accused persons named in the complaint were in charge of the affairs of the company and were in charge or responsible to the Company for the conduct of the business of the Company, in that case, the complaint is not required to be quashed in exercise of powers under Section 482 of the Criminal Procedure Code as all other aspects whether in fact they can be held vicariously liable or not, all these questions are required to be adjudged during trial. It is also observed by the Hon'ble Supreme Court in the said decision that when there are allegations in the complaint that at the time at which dishonoured cheques were issued by the Company, the accused persons were Directors of the Company and were in charge of the affairs of the company, it is not proper to split hairs in reading the complaint so as to come to the conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the appellant and the other are not alleged to be persons incharge of the affairs of the Company. The Hon'ble Supreme Court in para 14,16 and 18 has observed as under :

> “14. A person normally having business or commercial dealings with a company, would satisfy himself about its creditworthiness and reliability by looking at its promoters and Board of Directors and the nature and extent of its business and its Memorandum or Articles of Association. Other than that, he may not be aware of the arrangements within the company in regard to its management, daily routine, etc. Therefore, when a cheque issued to him by the company is dishonoured, he is expected only to be aware generally of who are incharge of the affairs of the company. It is not reasonable to expect him to know whether the

person who signed the cheque was instructed to do so or whether he has been deprived of his authority to do so when he actually signed the cheque. Those are matters peculiarly within the knowledge of the company and those in charge of it. So, all that a payee of a cheque that is dishonoured can be expected to allege is that the persons named in the complaint are in charge of its affairs. The Directors are prima facie in that position.

16. In the light of the ratio in S.M.S. Pharmaceuticals Ltd. (supra) what is to be looked into is whether in the complaint, in addition to asserting that the appellant and another are the directors of the company, it is further alleged that they are incharge of and responsible to the company for the conduct of the business of the company. We find that such an allegation is clearly made in the complaint which we have quoted above. Learned Senior Counsel for the appellant argued that in Saroj Kumar Poddar case (supra), this Court had found the complaint unsustainable only for the reason that there was no specific averment that at the time of issuance of the cheque that was dishonoured, the persons named in the complaint were incharge of the affairs of the company. With great respect, we see no warrant for assuming such a position in the context of the binding ratio in S.M.S. Pharmaceuticals Ltd. (supra) and in view of the position of the Directors in a company as explained above.

18. In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the two dishonoured cheques were issued by the company, the appellant and another were the Directors of the company and were incharge of the affairs of the company. It is not proper to split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the appellant and the other are not alleged to be persons incharge of the affairs of the company. Obviously, the complaint refers to the point of time when the two cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. We have no hesitation in overruling the argument in that behalf by the learned Senior Counsel for the appellant.“

Similar view is expressed by the Hon'ble Supreme Court in the case of Everest Advertising (P) Ltd. (supra).

18. Now looking to the allegations and averments in the impugned complaints, which are reproduced herein above, there are specific allegations against the petitioners that they were partners of the partnership firm on whose behalf accused no.3 issued cheques; were in charge and responsible to the conduct of the business of the company and therefore, when there are specific allegations against the accused persons, all other aspects and contentions raised on behalf of the petitioners are defences which are required to be adjudged during trial on leading proper evidence and therefore, it is not a fit case for quashing the complaint in exercise of powers under Section 482 of the Cr.P.C. It is also required to be noted at this stage that the impugned complaints are of the year 2000 and the summons have been issued by the learned trial Court in the year 2000 and the present applications for quashing the complaints are filed in the year 2006.

19. For the reasons stated above, all the applications fail, require dismissal and accordingly they are dismissed. Rule discharged. Ad-interim relief, if any, stands vacated forthwith.

[M.R.Shah, J.]

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